(1)
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

Edward H. Flint

Petitioner

v.

A.C. McKay Chauvin

Respondent

On Petition for a Writ of Certiorari to the Court of Appeals for the Sixth Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1- Does the ruling by the United States Supreme Court in **Stump v Sparkman 435 U.S. 349, 357 (1978)** eliminate the requirement that a judge has to obey all court rules and state laws, on any decisions they make .

2- What are the limits and meanings of **"normal functions"** and **"clear absence of all jurisdiction** in granting immunity to a judge as used in the Judgment issued by the United State Supreme Court in **Stump v Sparkman 435 U.S. 349, 357 (1978)**?

3- Is violating of the Kentucky Supreme Court Rules, violating Kentucky Statutes, denying a party Due Process and violating Kentucky's Code of Procedures Rules considered to be a normal function for a judge as stated in **Stump v Sparkman 435 U.S. 349, 357 (1978)**?

4- Was the trial court correct that Respondent was not in **"clear absence of all jurisdictions"**in its rulings, when he violated court rules and statute laws?

5- Was the trial and appeal courts correct when they ruled, a judge has immunity on all decisions a judge makes regardless of the circumstances, which means regardless if court rules and state laws, was violated.

6- Is Chief Judge Roberts correct or wrong when he told the United States Senate that a judge's role is as follows, **"Judges are like umpires. Umpires don't make the rules. They apply them. The role of an umpire and a judge is critical. The make sure everybody plays by the rules. But it is a limited role.**

In the Supreme Court of the United States

NO.____

Edward H. Flint, Petitioner,

v.

A.C. McKay Chauvin , Judge Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Edward H. Flint the Petitioner prays, that a Writ of Certiorari issue to review the judgment of the Sixth Circuit Court case No. 10-5695 entered in the above case on November 18, 2010

OPINION BELOW

The judgment of the Sixth Circuit entered on November 18, 2010

JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 USC 1254

Parties

Edward H. Flint, Petitioner

McKay Chauvin, Judge, Respondents

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STATEMENT OF THE CASE

Procedural history

This action arises out of a complaint filed in Jefferson County Kentucky Circuit Court on October 2007 case No. 07-CI-10558. Petitioner was Pro, Se and was 76 years old. The case was about a flawed election for officers at a Condo Association where Petitioner lived. Petitioner knew based on evidence he had seen, the ballots had been substituted for and when the Board of Directors refuse to response to his letters asking that a meeting be called for a reelection and the Petitioner filed a suit.

Petition was Pro, Se and three judges violated Kentucky Supreme Court's rule regarding the moving and reassigning of cases. The judges by Kentucky Supreme Court Rules could not move the case without a reason, which they didn't have.

Petitioner sued the three judges in Federal District Court. The District Court granted the three judges immunity and dismissed Petitioner case. Petitioner appealed to the Court of Appeals. The Court of Appeals upheld the District Court order dismissing the appeal. Petitioner appealed to this court for Writ of certiorari and this court denied Petitioner certiorari.

Petitioner filed a different case in Jefferson County District Court and the first judge, on the first hearing denied Petitioner every thing he asked for and out of the blue for no reason,(as the tape of the hearing shows), the judge threaten to put Petitioner in jail.

Petitioner requested that the judge recuse themselves from the case and the judge did.

Petitioner sued this judge in Federal Court for terroristize threatening.

The case was assigned to another judge and that judge refused to let Petitioner have any discovery. It became clear that no judge in Jefferson County was going to give Petitioner a fair and honest trial. Petitioner sued that judge in Federal Court.

Petitioner moved the case to Jefferson County Circuit Court. The first judge would not grant Petitioner discovery and Petitioner sued him in Federal Court.

The case was moved to a second judge in Circuit court. This judge refused to give Petition any discovery. Petitioner sued him in Federal court and then asked him to recused him self from the case and he refused to recuse him self.

Petitioner asked all four judges to let him move the case to another county and all four refused.

Petitioner now has the case in the Kentucky Court of Appeals and the Kentucky Supreme Court, regarding the judge recusing him from the case.

The Federal District Court has dismissed all four of Petitioners cases against the judges. The Court of Appeals has the cases on appeal, except this case and one other that Petitioner is asking for a rehearing. On all case where Petitioner has sued judges the District Court has dismiss all cases based on the fact that

regardless of the bases for the suit, judges have absolute immunity. Each judge cited **Stump v Sparkman 435 U.S. 349, 357 (1978)**

The Court of Appeals upholds the District Courts and states that the Supreme Court 1978 ruling has not has not changed nor has the language in Stump v Sparkman been changed or clarified and therefore they have no choice but to grant immunity, regardless of how bad the actions by the judge was.

Arguments

Petitioner argues that the Court of Appeals was not correct when it stated that "Although Flint has not expressly identified which improper actions the judge engaged in," and further stated that "It is clear that Flint challenges the judges ruling in Flint lawsuit against the condominium." The appeals court is wrong in that statement. Flint gave the district court over an inch of pleadings with exhibits, which out lined the facts, where Judge Chauvin **denied Flint all discoveries he had requested, denied him a trial date, which he requested** and Judge Chauvin further stated,**"this case has a long way to go,"** Judge Chauvin **denied Flint the right to move the case to the next county, although there is a Kentucky law that says Flint was entitled to move the case"**. The Appeals court failed to look at the records in the case.

The Appeals court is wrong in their statement that Flint questioned the Stump ruling. What Flint questioned was, does violating Court rules and state laws by a judge meet the ruling of Stump. This is the same question

Flint is asking this Court. The Court of Appeals stated that their ruling was and I quote, **"Finally, although Flint takes issue with the holding in Stump, he does not allege that the case has been overruled by the Supreme Court, and this court is bound by the precedent set forth in that case. Hence, the district court properly concluded that judge Chauvin was entitled to judicial immunity."**

The courts have left no way for a judge to be sued, even if they violate rules and laws.

The reading of Stump v Sparkman shows it was meant by the Supreme Court for a judge to be sued under certain conditions and Petitioner is asking this honorable body to clarify the language in the Stump case, so all parties knows what those conditions are.

Petitioner will quote from Stump, **"a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority: rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction."**

Petitioner's interpretation is in 1978 this court wanted to protect with immunity a judge who had made a ruling based up on their best judgment, excluding violating courts rules and laws. If this is the correct interpretation Petitioner believes it is a good ruling. But the court did not mean for it to extent to the point a judge can violate Court rules and laws. To do so take away a party's Due Process to a fair and honest trial.

However courts are interpreting the wording to mean it applies to everything a judge does regardless of what they do.

In Petitioner case the judge violated Kentucky Supreme Court Rules, violated the Due Process Amendment, violated Kentucky rules of civil Procedures and violated Kentucky laws. In addition it is plain that judges across America believe they have immunity from each and everything the say or order or do.

Stump has two phases that should be clarified. The first being"**clear absence of all jurisdiction**"and the second being **"Normal Functions."**

Courts have taken a position that this languge takes in everthing a judge does or says and therefore a judge is granted immunity, regardless if the judges violated rules and laws.

Petitioner argues that no violatation of court rules and any law can be in a judges jurisdiction and such violations can not be the normal function of a judge.

The interpertation by the lower courts are against Cannons Laws and all meanings of them. In really the courts rulings says that every judge in America can do as they please and be granted immunity. Only a clearification of the lanuage in Stump v. Sparkman by this court can America be sure of when a judge steps out of bounds of his duty.

REASONS FOR GRANTING THE WRIT

1. This honorable body should want to see that every citizen of America is granted Due Process.

2. This court should and needs to clarify the meaning of the wording of "Clear Absence of all Jurisdiction and normal functions" as used in Stump v. Sparkman.

3. Only by clarifying Stump v Sparkman will true justice ever exist for everyone in America.

4. Straightening out the question of immunity for judges, which has been raging ever since the ruling was made in 1978, will true confidence be in America, that the justice system is working hard to make sure every American will receive justice in the entire court system, through out America.

5. Petition deserves an opportunity to try his case.

6. If all judges was honest this ruling would not be needed, but like all parts of our society, there are bad eggs in every group.

CONCLUSION

1. The language in Stump v. Sparkman is vague, open for different interpretations and all parties in the justice system need to know their simplified actual meanings.

2. America needs to know in order to remove any doubt. The decision was 5 to 3 with one dissenting vote when this court made its ruling in 1978. A clarification is good for America. When there is no doubt of a court ruling, it's good for America and for justice.

3. Petition has been harmed by the lower courts interpreting. He has 3 other cases that will come to this court unless he gets a clarification.

4. Petitioner asks this honorable body to move this issue forward with a clear interpretation.

5. Unless the court clarifies the meaning of Stump v Sparkman, immunity for judges, the issue will expand as to what a judge can do in their court. There has to be a limit of all judge's actions, at some point in law and this court needs to make sure that all decisions are a correct decision, so everyone is playing the same game, by the same rules.

6. A clear definition gives honest judges, lawyers and average persons a better shot at equal justice.

7. Every honest ethical judge in America would welcome a clarification of the meaning of Stump v. Sparkman.

8. Petitioner deserves justice not heartaches. A clarification of the meaning of Stump v. Sparkman will make the details actual and leave no doubts.

Respectfully submitted,

s/ Edward H. Flint, Pro, Se.
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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 10-5695

Edward H. Flint,

Plaintiff-Appellant,

v.

A.C. McKay Chavin, aka A.C. McKay Chavin

Defendant-Appellee.

ORDER - December 14, 2010

Before: Gibbons and Rogers, Circuit Judges; ECONOMUS, District Judge*

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

* the Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No.10-5695

Edward H. Flint,

Plaintiff-Appellant,

v.

A.C. McKay Chavin, aka A.C. McKay Chavin

Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Kentcky

FILED - November 18, 2010

Before: Gibbons and Rogers, Circuit Judges; ECONOMUS, District Judge*

Edward H. Flint, a Kentucky resident proceeding, pro se, appeals from a district court order dismissing his civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(s).

* the Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation

Seeking monetary and equitable relief, Flint sued Judge A.C. McKay Chauvin of the Jefferson County Circuit Court, in both his individual and official capacities. Flint claimed that the judge violated Flint's constitutional rights during court proceedings in Flint's lawsuit against a condominium association. Flint also alleged that the judge "failed to perform his duty required by the Kentucky Justice System, the Kentucky Supreme Court Rules and laws of the state of Kentucky." Flint also alleged that Chauvin exhibited bias against him because he has sued other Jefferson County Circuit Judges. This court previously affirmed the dismissal of Flint's lawsuit against those Judges. *Flint v. Shake*, No. 09-5577 (6th Cir. Dec. 30, 2009).

Chauvin filed a motion to dismiss the complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Flint's claims against him in his official capacity were barred by sovereign immunity and that Flint's claims against him in his individual capacity were barred by judicial immunity. The district court granted Chauvin's motion to dismiss, concluding that Flint's claims were barred by judicial immunity because the judge's actions were taken in the scope of the court's jurisdiction.

On appeal, Flint argues that the district court improperly concluded that Judge Chauvin was entitled to judicial immunity because the judge had violated Kentucky Supreme Court Rules and Kentucky law. Flint argues that these violations deprived the court of jurisdiction. He also argues that *Stump v. Sparkman*, 435 U.S. 349 (1978), is "terrible law" because it provides for immunity in situations where a judge should not be granted immunity.

The district court properly dismissed Flint's complaint. We review de novo a district court's dismissal

of a complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. *See Benzon v. Morgan Stanley Distrib., Inc.*, 420 F.3d 598, 605 (6th Cir. 2005). In considering a motion to dismiss under Rule 12(b)(6), the court "must accept all well-pleaded factual allegations of the complaint as true and construe the complaint in the light most favorable to the plaintiff." *Benzon*, 420 F.3d at 605 (citing *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002)). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). The complaint will survive a motion to dismiss if it "contain[s] sufficient factual matter, acceptable as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570).

Absolute judicial immunity attaches only to actions undertaken in a judicial capacity. *See Barnes v. Winchell*, 105 F.3d 1111, 1116 (6th Cir. 1997). Whether an act is judicial depends on the nature and function of the act, not the act itself. *Id.* In examining the functions normally performed by a judge, courts have found that judicial acts involve resolving disputes between parties who have invoked the jurisdiction of the court. *Id.*

The Supreme court has explicitly stated that a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *See Stump*, 435 U.S. at 356-57. Absolute judicial immunity is overcome only when a judge engages in non-judicial actions or when the judge's actions, though judicial in nature, are taken in complete absence of all jurisdiction. *See*

Milers v. Waco, 502 U.S. 9, 11-12 (199). Neither of these circumstances exists here.

Here, Judge Chauvin engaged in conduct well within the scope of his judicial duties and within the court's jurisdiction. Although Flint has not expressly identified which improper actions the judge engaged in, it is clear that Flint challenges the judge's rulings in Flint's civil lawsuit against the condominium association. Judge Chauvin's rulings during those proceedings were taken well within a judge's purview. Contrary to Flint's argument, even if the rulings were made in error, the judge's decision is still protected by judicial immunity because the decision was made within the scope of his official duties as a judge. *See Stump*, 435 U.S. at 356-57. Finally, although Flint takes issue with the holding in *Stump*, he does not allege that the case has been overruled by the Supreme Court, and this court is bound by the precedent set forth in that case. Hence, the district court properly concluded that Judge Chauvin was entitled to judicial immunity.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Criminal Action No. 3:10-CV-149-M

Edward H. Flint,

Plaintiff-Appellant,

v.

Judge A.C. McKay Chavin

Defendant-Appellee.

FILED - June 1, 2010

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Judge A.C. McKay Chauvin's motion to dismiss Plaintiff Edward Flint's complaint [DN 5] and for sanctions pursuant to Fed. R. Civ. P. 11 in the form of attorney's fees and an order requiring judicial review of any new filings by the Plaintiff prior to the responsive pleading being required by the state. [Dn 7]. Fully briefed, the matter is ripe for decision.

This is Flint's fifth lawsuit in the last two years filed in the United States District Court for the Western District of Kentucky against a Jefferson County judge. Every one of the federal suits is related to rulings in two state court lawsuits Flint brought against his condominium association. In this case, Plaintiff seeks an award of "compensatory and punitive damages" as well as an order that Judge Chauvin "resign at once"

from the bench "for actions committed by Defendant in case NO. 09-CI-010478 as judge in Jefferson County Circuit Court," including "failing to perform his duty required by the Kentucky Justice System, the Kentucky Supreme Court Rules and laws of the state of Kentucky"; "den[ying]] Plaintiff his judicial rights and discrimina[ting] against him"; and "harm[ing] him when Defendant did not correctly abide by the Civil Rules of the Kentucky Court System and the laws of the state of Kentucky." (Complaint, pp. 1-3). Judge Chauvin argues that the case should be dismissed because Flint's complaint fails to state a claim for which relief can be granted, is granted by sovereign immunity, and is barred by judicial immunity.

The Court agrees that judicial immunity bars the claim. "A judge is immune, under Kentucky law, from personal liability for those acts undertaken while that judge has jurisdiction over a case. Even when jurisdiction is contrary to law, judicial immunity still applies." *City of Louisville v. Bergel*, 610 S.W.2d 292, 293 (Ky. 1980). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *see also Baker v. Fletcher*, 204 S.W.3d 589, 595 (Ky. 2006). Because Flint's claim in this case is based on Judge Chauvin's rulings in the state court proceeding, and because there is no allegation of any facts suggesting that Judge Chauvin acted in clear absence of all jurisdiction, Defendant's motion to dismiss is **GRANTED**.

Defendant also requests sanctions in the form of attorney's fees and an order requiring pre-responsive-pleading judicial review of Plaintiff's future filings

because "[t]his is the fifth suit against judges presiding over cases involving Mr. Flint . . . [and] enough is enough." (Defendant's Motion for Sanctions, P. 2). The Court agrees that enough is enough. However, as Judge Simpson recently noted in *Flint v. Edwards*, No. 3:09-cv-00956-CRS, *2 (W.D. Ky. May 4, 2010), an award of attorney's fees for defendants like Judge Chauvin would be an odd fit because they are represented by the Kentucky Attorney General's office and therefore have no attorney's fees. The Court also does not believe that an order requiring pre-screening of Plaintiff's future filings is warranted because what makes Flint's claims frivoulous–the failure to plead anything that might overcome judicial immunity–also makes the responsive burden on the state very slight. Accordingly, Defendant's motion for sanctions is **DENIED**. Plaintiff's cross-motion for sanctions [DN 9] is meritless and likewise **DENIED**. A Judgment will be entered consistent with this Opinion.

(s) Joseph H. McKinley, Jr., Judge
United States District Court
June 1, 2010

cc. Counsel of Record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Criminal Action No. 3:10-CV-149-M

Edward H. Flint,

Plaintiff-Appellant,

v.

Judge A.C. McKay Chavin

Defendant-Appellee.

FILED - June 1, 2010

JUDGMENT

This matter is before the Court on a dispositive motion filed by Defendant, and the Court on this date having issued a Memorandum Opinion and Order granting the motion,

IT IS HEREBY ORDERED that judgement be entered in favor of the Defendant consistent with the Court's Memorandum Opinion and Order and the Plaintiff's Complaint be dismissed with prejudice.

(s) Joseph H. McKinley, Jr.
Joseph H. McKinley, Jr., Judge
United States District Court

cc. Counsel of Record